

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**Nathan Sinko***Petitioner***v.****NO. 2015-CA-00107-COA****STATE OF MISSISSIPPI***Respondent***Response to the Petitioner's Motion for Expedited Consideration of Appeal, and to the
Petitioner's Motion for Judicial Notice of Public Documents**

COMES NOW the Respondent, the State of Mississippi, by and through counsel, and moves this Court to deny the Petitioner's Motion for Expedited Consideration, and to dismiss the Petitioner's Motion for Judicial Notice of Public Documents. As grounds for this motion, we would show the following.

I.

Appellant, Nathan Sinko, brings an appeal from the Circuit Court of Oktibbeha County's dismissal of his motion for post-conviction relief. The Appellee's Brief is due on August 8, 2015. In his Appellant's Brief, Sinko claims that the circuit court had jurisdiction to entertain his PCR motion, that the circuit court should have found that he is eligible for parole, that the MDOC's correction of its prior misinterpretation of the law violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, that the correction is an improper *ex post facto* change in policy, and that he should have been warned (at his plea proceeding) that he would

not be eligible for parole. (Appellant's Brief p. 6-18).

II.

On July 15, 2015, the Petitioner submitted a Motion for Expedited Consideration of Appeal. The Petitioner essentially asserts that his case should be expedited for consideration because, if he is entitled to the relief that he seeks, 866 other inmates might also be entitled to relief, and Mississippi tax payers have a strong interest in allowing parole eligible inmates to be considered for parole. The Respondent submits that an appellant is not entitled to have his case expedited simply because he believes his arguments have merit. If that were the case, every person who filed an appeal in the State of Mississippi would most likely seek to have his or her case expedited. The Respondent can think of no reason why Sinko's appeal should take priority over the other cases (both criminal and civil) that are waiting to be considered by this Court.

III.

On July 15, 2015, the Petitioner also submitted a Motion for Judicial Notice of Public Documents. He submits that these documents— which include a Memorandum Opinion and Order issued by a circuit court in Lauderdale County, a list of inmates who were paroled prior to MDOC's correction of its prior misinterpretation of the law, and a list of people who were affected by the MDOC's policy correction—should be considered by this Court in deciding whether to grant his Motion to Expedite his appeal. The Respondent submits that the submission of these documents is an improper attempt to present additional arguments and evidence that were not presented to the circuit court or in the Appellant's Brief; accordingly, these documents should not be considered by this Court. Consequently, the Petitioner's improper submissions should be struck. *See Wansley v. State*, 798 So. 2d 460, 464 (Miss. 2001)(citation omitted)(holding that the Court “will not consider

matters which do not appear in the record and must confine [itself] to what actually appears in the record. Moreover, [the Court] cannot decide an issue based on assertions in the briefs alone; rather, issues must be proven by the record”).

IV.

WHEREFORE, PREMISES CONSIDERED, the Respondent respectfully requests that the Court deny the Petitioner’s Motion to Expedite Appeal, and dismiss the Petitioner’s Motion for Judicial Notice of Public Documents.

Respectfully submitted,
JIM HOOD
ATTORNEY GENERAL
STATE OF MISSISSIPPI

s/ Barbara Byrd
BARBARA BYRD
SPECIAL ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

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This the 16th day of July, 2015.

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